

OPEN MEETING AGENDA ITEM



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Attorneys for Liberty Utilities (Black Mountain Sewer) Corp.

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE FORMAL
COMPLAINT AGAINST BLACK
MOUNTAIN SEWER CORPORATION
FILED BY CAREFREE 34 INC. / OFFICE
ON EASY STREET, INC. dba VENUES
CAFE.

DOCKET NO: SW-02361A-13-0359

RESPONSE TO RECOMMENDED
OPINION AND ORDER – STATEMENT
TO CLARIFY FACTS

Liberty Utilities (Black Mountain Sewer) Corp. (“Liberty”) hereby files this brief response to the Recommended Opinion and Order dated January 15, 2015 (“ROO”). Liberty supports the ROO and believes that the recommended dismissal of the complaint is warranted. Liberty wishes, however, to clarify certain background facts in order to ensure there is no confusion concerning the genesis of the Complainant’s claims.

Specifically, in Finding of Fact No. 2, the ROO states that the Complainant’s monthly bill increased after a December 2012 chair audit determined that the restaurant actually had over 100 chairs, not the 12 chairs upon which the bill was previously based.¹ Actually, this “audit”—Liberty conducts these audits on a periodic basis²—discovered that the Complainant was operating a restaurant; previously, Liberty was billing the property as a general office or retail space.³ Per Liberty’s current tariff approved in Decision No. 71865 (September 1, 2010), the monthly charge for an office or retail space was \$87.06 per month, while the monthly charge for a restaurant with 108 chairs was

¹ ROO at 4:23 – 5:2.

² ROO at 11:23-24.

³ ROO at 11:17-22.

Arizona Corporation Commission

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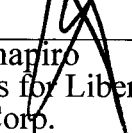
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1 \$805.90. Complainant refused to pay the monthly charge for a restaurant, and instead
2 filed this complaint.

3 These facts are not in dispute. Nor was the fact that Liberty waited nearly four
4 months after discovering the error before implementing the correct monthly service
5 charge as a courtesy to the customer, or the fact that Liberty made no attempt to collect
6 any amounts that were previously under billed.⁴ In sum, Liberty discovered that a
7 customer was being billed incorrectly, to Liberty's detriment. It promptly notified the
8 customer and after due notice and a courtesy period, Liberty billed per its tariff. Liberty
9 has continued to bill the Complainant per its tariff throughout the pendency of this
10 dispute, another fact that is not in dispute.

11 RESPECTFULLY SUBMITTED this 26th day of January, 2015.

12 SHAPIRO LAW FIRM, P.C.

13
14 By 
15 Jay L. Shapiro
16 Attorneys for Liberty Utilities (Black Mountain
Sewer) Corp.

17
18
19 **ORIGINAL** and thirteen (13) copies
20 of the foregoing were filed
this 26th day of January, 2015, with:

21 Docket Control
22 Arizona Corporation Commission
23 1200 W. Washington Street
Phoenix, AZ 85007

24
25
26 ⁴ ROO at 11:17-22.

1 **COPY** of the foregoing was hand-delivered
2 this 26th day of January, 2015, to:

3 Marc Stern, ALJ
4 Hearing Division
5 Arizona Corporation Commission
6 1200 W. Washington Street
7 Phoenix, AZ 85007

8 Wes Van Cleve
9 Legal Division
10 Arizona Corporation Commission
11 1200 W. Washington Street
12 Phoenix, AZ 85007

13 **COPY** of the foregoing mailed/e-mailed
14 this 26th day of January, 2015, to:

15 Al Swanson
16 Catherine Marr
17 Venues Café
18 34 Easy Street
19 Carefree, AZ 85377-2000

20 By: Whitney Burk
21
22
23
24
25
26